

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THOMAS ETIENNE ROTHSCHILD,

Plaintiff,

v.

No. 1:22-cv-00202-KWR-KK

JOSE ANTONIO CORTEZ,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

Pro se Plaintiff entered into a lease to live in Defendant's home with Defendant beginning on January 1, 2022. *See* Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 at 2, Doc. 1, filed March 18, 2022 ("Complaint"). Plaintiff paid the first and last month's rent on January 12, 2022. *See* Complaint at 2. Defendant allegedly agreed to wait for rent payments until Plaintiff received his Social Security deposit but later demanded Plaintiff pay rent and utilities before the February due date. *See* Complaint at 2-3. Defendant called the police and began harassing Plaintiff in an attempt to force Plaintiff to move out of Defendant's home. *See* Complaint at 3-4.

Plaintiff asserts three causes of action against Defendant pursuant to 42 U.S.C. § 1983: (i) violation of federal Fair Housing regulations; (ii) elder abuse; and (iii) theft of mail.

United States Magistrate Judge Kirtan Khalsa notified Plaintiff that the Complaint fails to state a claim pursuant to 42 U.S.C. § 1983 for violation of federal Fair Housing regulations because there are no allegations showing Defendant was acting under color of state law or that Defendant deprived Plaintiff of a right secured by federal law. *See* Order for Amended Complaint at 3-4, Doc. 5, filed March 21, 2022 (noting that the Complaint stated "The defendant was not

acting in the color of state law," there are no allegations showing that the cited regulations apply to Defendant, and Plaintiff did not explain how Defendant violated the regulations).

Judge Khalsa notified Plaintiff the Complaint fails to state a claim pursuant to 42 U.S.C. § 1983 for elder abuse because it states Defendant was not acting under color of state law and it does not allege the deprivation of a right secured by federal law. *See* Order for Amended Complaint at 5 (noting that Plaintiff relied on two definitions from the State of Delaware's statutes regarding adult protective services).

Judge Khalsa notified Plaintiff the Complaint fails to state a claim upon which relief can be granted for mail theft because Plaintiff relies on 18 U.S.C. § 1708, which is a criminal statute, and "criminal statutes do not provide for private civil causes of action." Order for Amended Complaint at 5 (quoting *Kelly v. Rockefeller*, 69 Fed.Appx. 414, 415-416 (10th Cir. 2003)).

Judge Khalsa notified Plaintiff that the Complaint should be dismissed for failure to state a claim, ordered Plaintiff to file an amended complaint, and notified Plaintiff that failure to timely file an amended complaint may result in dismissal of this case. Judge Khalsa later granted Plaintiff's motion for a 30-day extension of time because he contracted Covid. *See* Doc. 7, filed April 12, 2022. Plaintiff did not file an amended complaint by the May 12, 2022, deadline.

IT IS ORDERED that this case is **DISMISSED WITHOUT PREJUDICE**.


KEA W. RIGGS
UNITED STATES DISTRICT JUDGE